

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**JOHN L. JONES,
Petitioner,**

**CASE NO. 2:07-CV-941
JUDGE MARBLEY
MAGISTRATE JUDGE KING**

v.

**ERNIE MOORE, WARDEN,
Respondent.**

OPINION AND ORDER

On September 24, 2007, the Magistrate Judge issued a *Report and Recommendation* pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts recommending that the instant petition for a writ of habeas corpus be dismissed as barred by the one-year statute of limitations under 28 U.S.C. §2244(d). Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. For the reasons that follow, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action hereby is **DISMISSED**.

Petitioner again raises all of the same arguments that were previously presented. He asserts that his habeas corpus petition is timely because the Ohio Supreme Court did not decide until February 27, 2006, in *State v. Foster*, 109 Ohio St.3d 1 (2006), that portions of Ohio's sentencing statutes violated *Blakely v. Washington*, 542 U.S. 296 (2004); he also contends that *Blakely* should be retroactively applied to cases on collateral review. Additionally, petitioner argues that he did not waive any *Blakely* claim at sentencing. He refers to the United States Supreme Court's decision in *Washington v. Recuenco*, 126 S.Ct. 2546 (2006)(holding that a *Blakely* claim is subject to harmless error), in support of his contention that his habeas corpus petition is timely.

Petitioner's arguments are not persuasive. The statute of limitations expired on April 17, 2004. Petitioner waited until September 10, 2007, to sign the instant habeas corpus petition, which was filed on September 17, 2007.

Pursuant to 28 U.S.C. 636(b)(1), this Court has conducted a *de novo* review of the *Report and Recommendation*. For the reasons detailed in the Magistrate Judge's *Report and Recommendation*, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action hereby is **DISMISSED**.

IT IS SO ORDERED.

s/Algenon L. Marbley

Algenon L. Marbley
United States District Judge